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E-filing

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRB

MICHELLE NELSON,

Plaintiff,

vs.

NOBEL RECOVERY SERVICES
LLC,

Defendant.

Case No. **CV 09 5739**

) **COMPLAINT FOR VIOLATION**
) **OF FEDERAL FAIR DEBT**
) **COLLECTION PRACTICES ACT,**
) **ROSENTHAL FAIR DEBT**
) **COLLECTION PRACTICES ACT**
)
)
)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, MICHELLE NELSON ("Plaintiff"), is a natural person
9 residing in Alameda county in the state of California, and is a "consumer" as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal
11 Civ Code 1788.2(h).
12

13
14 4. At all relevant times herein, Defendant, Nobel Recovery Services
15 LLC("Defendant") was a company engaged, by use of the mails and telephone, in
16 the business of collecting a debt from Plaintiff which qualifies as a "debt," as
17 defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ
18 Code § 1788.2(f). Defendant regularly attempts to collect debts alleged to be due
19 another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §
20 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
21
22

23 **IV. FACTUAL ALLEGATIONS**

24
25 5. At various and multiple times prior to the filing of the instant
26 complaint, including within the one year preceding the filing of this complaint,
27 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:
3

- 4 1. Using, or threatening to use, physical force, violence or any
5 criminal means to cause harm to the person, reputation or
6 property of Plaintiff (Cal Civ Code § 1788.10(a)),
7 including, but not limited to, Mr. Zavala, an employee of
8 Defendant, telling Plaintiff that her daughter will have to
9 visit her behind bars, that she will have a felony on her
10 record, and that he has reason to believe that Plaintiff's
11 references helped her commit a crime;
12
- 13 2. Threatening that the failure by Plaintiff to pay Plaintiffs
14 consumer debt will result in an accusation that Plaintiff had
15 committed a crime, where such accusation is false (Cal Civ
16 Code § 1788.10(b)), including, but not limited to, Mr.
17 Zavala, an employee of Defendant, telling Plaintiff that she
18 was going to tell, that her daughter would be taken from
19 her, and that she would have a felony on her record;
20
- 21 3. Communicating, or threatening to communicate to a third
22 party the fact that Plaintiff has engaged in conduct, other
23 than the failure to pay a consumer debt, which Defendant
24 knew or had reason to know would defame the debtor (Cal
25 Civ Code § 1788.10(c)), including, but not limited to, Mr.
26 Zavala, an employee of Defendant, telling Plaintiff on
27 October 19, 2009, that he was going to call her neighbors at
28 34141 Gannon Terrace if Plaintiff didn't pay her debt;
4. Threatening Plaintiff that nonpayment of Plaintiffs debt
may result in the arrest of Plaintiff or the seizure,
garnishment, attachment or sale of any property or the
garnishment or attachment of wages of Plaintiff, where
such action was not in fact contemplated by the debt
collector and permitted by the law (Cal Civ Code §
1788.10(e)), including, but not limited to, Mr. Zavala, an
employee of Defendant, telling Plaintiff that she was going
to tell, that her daughter would be taken from her, and that
she would have a felony on her record;

- 1 5. Using obscene or profane language in a conversation with
2 Plaintiff (Cal Civ Code § 1788.11(a));
3
- 4 6. Placing (a) telephone call(s) to Plaintiff without disclosure
5 of the caller's true identity or a registered alias name along
6 with the name of the agency authorizing the call (Cal Civ
7 Code § 1788.11(b)), including, but not limited to, Mr.
8 Zavala, an employee of Defendant, not answering Plaintiff
9 when she asked him what company he works for, or
10 providing Plaintiff with his first name;
11
- 12 7. Causing a telephone to ring repeatedly or continuously to
13 annoy Plaintiff (Cal Civ Code § 1788.11(d)), including, but
14 not limited to, calling Plaintiff more than twice a day;
15
- 16 8. Communicating, by telephone or in person, with Plaintiff
17 with such frequency as to be unreasonable and to constitute
18 an harassment to Plaintiff under the circumstances (Cal Civ
19 Code § 1788.11(e)), including, but not limited to, calling
20 Plaintiff more than twice a day;
21
- 22 9. Falsely representing that Plaintiff's debt may be increased
23 by the addition of attorney's fees, investigation fees, service
24 fees, finance charges, or other charges, where, in fact, such
25 fees or charges could not legally have been added to the
26 existing obligation (Cal Civ Code § 1788.13(e)), including,
27 but not limited to, Mr. Zavala, an employee of Defendant,
28 telling Plaintiff she was going to pay interest on her loan,
court costs, and attorneys fees;
- 10.Falsely representing the true nature of the business or
services being rendered by Defendant (Cal Civ Code §
1788.13(i));
- 11.Falsely representing that a legal proceeding has been, is
about to be, or will be instituted unless payment of a

1 consumer debt is made (Cal Civ Code § 1788.13(j)),
2 including, but not limited to, Mr. Zavala, an employee of
3 Defendant, telling Plaintiff she is a criminal and has broken
4 the law. Mr. Zavala also told Plaintiff she would never
5 have a checking account or be able to work with a felony
6 on her record. Mr. Zavala told Plaintiff's employer that
7 Plaintiff would be served with papers, but she was never
8 served. Plaintiff was told she had no more chances and the
9 company was moving forward with a case against her;

10 12. In connection with an attempt to collect an alleged debt
11 from Plaintiff, contacting a third party for purposes other
12 than obtaining location information (§ 1692b & §
13 1692c(b)), including, but not limited to, Mr. Zavala, an
14 employee of Defendant, calling one of Plaintiff's
15 references, Ronaldo Bussey, at work. On another occasion,
16 Mr. Zavala contacted Plaintiff's employer and advised
17 them that Plaintiff would be served with papers;

18 13. In connection with an attempt to collect an alleged debt
19 from Plaintiff, providing the identity of Defendant to a
20 third party without such information being expressly
21 requested (§ 1692b(1) & § 1692c(b)), including, but not
22 limited to, Mr. Zavala, an employee of Defendant, called
23 Plaintiff's employer and advised them that Plaintiff would
24 be served with papers;

25 14. Disclosing to a third party the existence of the debt
26 allegedly owed by Plaintiff (§ 1692b(2) & § 1692c(b)),
27 including, but not limited to, calling Plaintiff's employer,
28 and calling Plaintiff's friend at work;

15. Communicating with a single third party more than once in
connection with an attempt to collect an alleged debt from
Plaintiff (§ 1692b(3) & § 1692c(b)), including, but not
limited to, calling Plaintiff's employer and calling
Plaintiff's friend at work;

- 1 16.Engaging in conduct the natural consequence of which is to
2 harass, oppress, or abuse Plaintiff (§ 1692d)), including,
3 but not limited to, threatening Plaintiff that she would be
4 going to jail and that her daughter would be taken away
5 from her. Also, Mr. Zavala, an employee of Defendant,
6 threatened to call all of Plaintiff's references, neighbors
7 and her job;
- 8 17.Using unfair or unconscionable means against Plaintiff in
9 connection with an attempt to collect a debt (§ 1692f)),
10 including, but not limited to, threatening Plaintiff with jail
11 and having her daughter taken away from her;
- 12 18.Using false representations and deceptive practices in
13 connection with collection of an alleged debt from Plaintiff
14 (§ 1692e(10)), including, but not limited to, threatening
15 Plaintiff with jail and having her daughter taken away from
16 her;
- 17 19.Failing to notify Plaintiff during the initial communication
18 with Plaintiff that the communication was an attempt to
19 collect a debt and any information obtained would be used
20 for that purpose (§ 1692e(11));
- 21 20.Failing to notify Plaintiff during each collection contact
22 that the communication was from a debt collector (§
23 1692e(11)); and
- 24 21.Where Defendant had not yet made an attempt to contact Plaintiff's
25 counsel or had not given Plaintiff's counsel sufficient time to respond to
26 the initial attempt to communicate with Plaintiff's counsel, and where
27 Plaintiff's counsel had not given Defendant permission to contact
28 Plaintiff directly, communicating with Plaintiff directly after learning
that Plaintiff is being represented by counsel (§ 1692c(a)(2).

1
2 6. As a result of the above violations of the FDCPA and RFDCPA,
3 Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal
4 humiliation, embarrassment, mental anguish and emotional distress, and
5 Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages,
6 and costs and attorney's fees.
7

8
9 **COUNT I: VIOLATION OF FAIR DEBT**
10 **COLLECTION PRACTICES ACT**

11 7. Plaintiff reincorporates by reference all of the preceding paragraphs.
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully prays that judgment be entered
15 against the Defendant for the following:
16

- 17 A. Declaratory judgment that Defendant's conduct
18 violated the FDCPA;
19 B. Actual damages;
20 C. Statutory damages;
21 D. Costs and reasonable attorney's fees; and,
22 E. For such other and further relief as may be just and proper.
23

24 **COUNT II: VIOLATION OF ROSENTHAL**
25 **FAIR DEBT COLLECTION PRACTICES ACT**

26 8. Plaintiff reincorporates by reference all of the preceding paragraphs.

27 9. To the extent that Defendant's actions, counted above, violated the
28 RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 30th day of November, 2009.

By: 
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